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REMARKS

Claims 1-10 are pending in the present Application. Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 1, 9 and 10 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner did not specify particular defects in the claims. Claims 1, 9 and 10 have been amended to overcome this rejection.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-10 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over in Apgar view of Hampar. Applicants respectfully traverse this rejection.

The Examiner relies on Apgar for teaching calculating cost efficiency and occupancy efficiency. The Examiner acknowledges that Apgar does not teach the claimed displaying step and relies on "design choice" and Hampar for teaching the claimed displaying. Applicant submits that the Examiner has failed to raise a *prima facie* case of obviousness.

First, with respect to claim 1, and several dependent claims, the Examiner relies on "design choice" for which variables are plotted, the lines corresponding to the four quadrants, etc. This type of "design choice" analysis has been criticized by the Federal Circuit. See *In re Chu*, 36 USPQ2d 1089, citing *In re Gal*, 25 USPQ2d 1076, (the finding of obvious design choice was precluded where the claimed structure and the function it performs are different from the prior art). In the present case, the plotting of the cost efficiency and the occupancy efficiency, along with the lines provides the user with a tool simply not provided in Apgar. As described in Applicant's specification, the four quadrants allow the user to visualize real estate evaluation and provide corrective guidance such as improve rent or improve efficiency. Thus, the variables graphed and the format selected are not mere design choices, but deliberate, inventive features that provide functions not provided in the prior art.

Further, Hampar is non-analogous art and is not properly relied upon in an

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obviousness rejection. As noted in MPEP § 2141.01(a), in order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. Hampar is directed to a method and test kit for the serological diagnosis of human infection by herpes simplex virus type 1 (HSV-1) and herpes simplex virus type 2 (HSV-2) using immunoaffinity purified virus-coded glycoproteins as target antigens. Clearly, this is not in the field of Applicant's invention, namely evaluating efficiency of real estate. Furthermore, Hampar is not reasonably pertinent to the particular problem with which the inventor was concerned. The problem faced by the Inventor is the evaluation of real estate efficiency and the presentation of the evaluation to a user in a manner that informs the user of corrective measures. Hampar is not reasonably pertinent to this problem.

Hampar does show a plot of two variables with lines parallel to the axes of the graph representing certain variable values. It is not clear from Hampar whether this plot is even presented to a user. It appears that the plot is intended to depict the likelihood of positive and negative diagnosis by two tests.

Lastly, even if Apgar and Hampar are combined, the combination does not teach or suggest the claimed features. There is no suggestion of which variables in Apgar should be presented in graphical format of which values should be used to establish the four quadrants, etc. These claimed features are summarily dismissed by the Examiner as a matter of "design choice." As noted above, this type of rejection is improper. Thus, the Examiner has failed to raise a *prima facie* case of obviousness.

For at least the above reasons, claims 1-10 are patentable over Apgar in view of Hampar.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

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If there are any additional charges with respect to this Amendment or otherwise,
please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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